

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
MARSHALL DIVISION

CONVOLVE, INC.

Plaintiff,

v.

DELL INC.,  
WESTERN DIGITAL CORPORATION,  
HITACHI GLOBAL STORAGE  
TECHNOLOGIES, INC., and  
HITACHI LTD.,

Defendants.

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Civil Action No. 2:08-cv-244

JURY TRIAL DEMANDED

**AMENDED DOCKET CONTROL ORDER**

In accordance with this court's Order on the Joint Motion to Amend the Docket Control Order dated March 24, 2010 (Dkt. No. 126), it is hereby ORDERED that the following schedule of deadlines is in effect until further order of this court:

| STEP | ACTION  | RULE        | DATE DUE   | AGREED DATE    |
|------|---|-------------|--|----------------|
| 7    | All parties make Supplemental Exchange of Proposed Terms and Claim Elements for Construction  | P.R. 4-1(a) | Not later than 10 days after Accused infringer serves preliminary invalidity contentions | April 9, 2010  |
| 11   | All parties make Exchange of Preliminary Claim Constructions and Extrinsic Evidence           | P.R. 4-2    | Not later than 20 days after 7   | April 23, 2010 |
| 12   | All parties meet and confer to discuss Preliminary Claim Constructions and Extrinsic Evidence | P.R. 4-2(c) | After 11 but before 13   | April 30, 2010 |

| STEP | ACTION  | RULE        | DATE DUE  | AGREED DATE                    |
|------|---|-------------|---|--------------------------------|
| 13   | All parties jointly file Joint Claim Construction and Prehearing Statement  | P.R. 4-3    | Not later than 60 days after 5  | May 14, 2010                   |
| 14   | Deadline to join other parties without leave of Court, which shall be at least 60 days before the deadline for filing dispositive motions |             | Same as 13  | May 14, 2010                   |
| 15   | Deadline to file amended pleadings without leave of Court, which shall be at least 30 days before the deadline for dispositive motions    |             |   | October 27, 2010               |
| 16   | Completion of Claim Construction Discovery  | P.R. 4-4    | Not later than 30 days after 13   | June 11, 2010                  |
| 17   | Patentee files opening claim construction brief   | P.R. 4-5(a) | Not later than 45 days after 13   | June 25, 2010                  |
| 18   | Accused Infringer files responsive claim construction brief   | P.R. 4-5(b) | Not later than 14 days after 17   | July 9, 2010                   |
| 19   | Patentee files reply brief on claim construction  | P.R. 4-5(c) | Not later than 7 days after 18  | July 16, 2010                  |
| 20   | ONLY WITH LEAVE OF COURT Accused infringer files sur-reply brief on claim construction  |             | Not later than 7 days after 19  | July 23, 2010                  |
| 21   | Parties file Joint Claim Construction Chart   | P.R. 4-5(d) | At least 10 days before Claim Construction Hearing  | August 13, 2010                |
| 22   | Pre-hearing Conference and technical tutorial if necessary  |             | The day before the Claim Construction hearing or in combination with the Claim Construction hearing | To be determined by Court      |
| 23   | Claim Construction Hearing  | P.R. 4-6    | September 9, 2010 at 9:00 a.m.  | September 9, 2010 at 9:00 a.m. |

| STEP | ACTION   | RULE                        | DATE DUE   | AGREED DATE                |
|------|--|-----------------------------|--|----------------------------|
| 24   | Court's Claim Construction Ruling  |                             | On or about (3 weeks after 23) subject to the Court's scheduling and/or use of a technical advisor | Approx. September 30, 2010 |
| 25   | Patentee makes Final Infringement Contentions  | P.R. 3-6(a)                 | On or about 30 days after claim construction ruling  | October 29, 2010           |
| 26   | Accused Infringer serves Preliminary Unenforceability Contentions  |                             | On or about 40 days after claim construction ruling  | November 10, 2010          |
| 27   | Accused Infringer makes Document Production Accompanying Preliminary Unenforceability Contentions                    |                             | On or about 40 days after claim construction ruling  | November 10, 2010          |
| 28   | Accused Infringer makes Final Invalidity Contentions   | P.R. 3-6(b)                 | On or about 50 days after claim construction ruling  | November 19, 2010          |
| 29   | Accused Infringer makes disclosure relating to willfulness   | P.R. 3-8                    | On or about 50 days after claim construction ruling  | November 19, 2010          |
| 30   | Accused Infringer makes Final Unenforceability Contentions   |                             | On or about 60 days after claim construction ruling  | December 3, 2010           |
| 31   | Deadline for completion of all fact discovery, which shall be at least 90 days before the final pre-trial conference |                             | On or about 80 days after claim construction ruling  | January 7, 2011            |
| 32   | Deadline for disclosure of expert testimony on issues for which a party bears the burden of proof                    | FRCP 26(a)(2) L.R. CV-26(b) | On or about 90 days after claim construction ruling  | January 17, 2011           |
| 33   | Deadline for disclosure of rebuttal expert testimony   | FRCP 26(a)(2) L.R. CV-26(b) | On or about 110 days after claim construction ruling   | February 7, 2011           |
| 34   | Deadline for late mediation at the Parties' request  |                             |  | February 15, 2011          |
| 35   | Deadline for completion of expert discovery  |                             | 30 days after rebuttal expert testimony  | March 9, 2011              |

| STEP  | ACTION  | RULE          | DATE DUE  | AGREED DATE    |
|-------|---|---------------|---|----------------|
| 36    | Deadline for objections to other parties' expert witnesses  |               | After 35  | March 18, 2011 |
| 37    | Deadline for filing dispositive motions, including motions on invalidity and unenforceability, which shall be at least 75 days before the initial pretrial conference |               | At least 75 days before initial pretrial conference | April 1, 2011  |
| 38    | Deadline for filing all <i>Daubert</i> motions  |               | Same as 37  | April 1, 2011  |
| 38(a) | Deadline to Oppose all <i>Daubert</i> or dispositive Motions  |               |   | April 22, 2011 |
| 38(b) | Deadline to File Reply in Support of <i>Daubert</i> or dispositive Motions  |               |   | May 2, 2011    |
| 38(c) | Deadline to File Sur-Reply in Opposition to <i>Daubert</i> or dispositive Motions   |               |   | May 12, 2011   |
| 39    | Deadline for parties to make pretrial disclosures   | FRCP 26(a)(3) | At least 30 days before initial pretrial conference | May 27, 2011   |
| 40    | Patentee to provide to other parties its information for Joint Final Pretrial Order, Proposed Jury Instruction and Verdict Form                                       |               | At least 30 days before initial pretrial conference | May 27, 2011   |
| 41    | Defendant and Third-Parties to Provide to Patentee their information for Joint Final Pretrial Order, Proposed Jury Instruction and Verdict Form                       |               | At least 30 days before initial pretrial conference | May 27, 2011   |

| STEP | ACTION  | RULE | DATE DUE  | AGREED DATE              |
|------|---|------|---|--------------------------|
| 42   | Parties to file Proposed Joint Final Pretrial Order, Proposed Jury Instructions, Joint Verdict Forms and Motions in Limine. Prior to initial pretrial conference, parties shall confer with each other regarding the other party's Motion in Limine, deposition designations, and exhibit and shall submit to the Court in writing any objections they may have to the other party's Motions in Limine, deposition designations, and exhibits |      | At least 2 weeks before initial pretrial conference | June 13, 2011            |
| 43   | Pretrial Conference   |      | June 27, 2011, 1:30 p.m.                            | June 27, 2011, 1:30 p.m. |
| 45   | Jury Selection  |      | July 5, 2011, 9:00 a.m.                             | July 5, 2011, 9:00 a.m.  |

SIGNED this 5th day of April, 2010.

  
 CHARLES EVERINGHAM IV  
 UNITED STATES MAGISTRATE JUDGE